

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

|  |   |                                    |
|--|---|------------------------------------|
| Daniel Draper, <sup>1</sup>              | ) |                                    |
|  | ) |                                    |
| Plaintiff,                               | ) |                                    |
|  | ) |                                    |
| vs.                                      | ) | Civil Action No. 9:21-cv-00185-TMC |
|  | ) |                                    |
| Ms. Barnes, <i>Warden</i> ; Dr. Onaha,   | ) | <b>ORDER</b>                       |
| <i>Medical Doctor</i> ; and Mrs. Ramsey, | ) |                                    |
| <i>Medical Nurse</i> ,                   | ) |                                    |
|  | ) |                                    |
| Defendants.                              | ) |                                    |
|  | ) |                                    |
|  | ) |                                    |

Plaintiff Daniel Draper, a federal prisoner proceeding *pro se* and *in forma pauperis*, filed this action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), alleging Defendants violated his constitutional rights. (ECF Nos. 1; 3; 13). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On July 26, 2021, Defendants filed a joint motion to dismiss or for summary judgment. (ECF No. 25). On August 5, 2021, Plaintiff filed his response in opposition to Defendants’ motion (ECF No. 30). Now before the court is the magistrate judge’s Report and Recommendation (“Report”), recommending that the court grant Defendants’ motion, and dismiss Plaintiff’s case without prejudice for failure to exhaust his administrative remedies. (ECF No. 35). The Report was mailed to Plaintiff at the address he provided the court, (ECF No. 36), and has not been returned as undeliverable. Therefore, Plaintiff is presumed to have received the Report. Plaintiff was advised of his right to file specific objections to the Report, (ECF No. 35

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<sup>1</sup> Plaintiff originally sought to bring this action jointly with another *pro se* plaintiff, Chad Piazza. However, on March 3, 2021, the court severed Mr. Piazza’s claims, which were re-docketed under a new case number. (ECF No. 7).

at 12), but failed to do so. The time for Plaintiff to object to the Report has now expired, and this matter is ripe for review.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Thus, having reviewed the Report and the record and, finding no clear error, the court agrees with, and wholly **ADOPTS**, the magistrate judge’s findings and recommendations in the Report (ECF No. 35), which is incorporated herein by reference. Accordingly, the court **GRANTS** Defendants’ motion to dismiss (ECF No. 25) and this action is **DISMISSED without prejudice** based on Plaintiff’s failure to exhaust his administrative remedies.

**IT IS SO ORDERED.**

Anderson, South Carolina  
January 12, 2022

s/Timothy M. Cain  
United States District Judge

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.